IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

Bail Appl..No. 6810 of 2007()

C.C.NO.110/04 OF J.F.C.M, WADAKKANCHERRY (ORIGINALLY FILED AS C.C.NO.515/01 OF J.F.C.M, WADAKKANCHERRY

APPLICANT : ACCUSED

BAVA @ KUNJI BAVA,
S/O.UNNINKUTTY, KODAKKADAN VEEDU,
PUTHUSSERY, CHERUTHURUTHY.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS: COMPLAINANT- STATE

STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/11/2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6810 of 2007

Dated this the 2nd day of November, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under Section 498 A I.P.C. Cognizance has already been taken on the basis of a final report submitted by the police. The petitioner is the brother in law of the defacto complainant. The defacto complainant's husband and mother in law have already faced trial. They have been found not guilty and acquitted. The case against the petitioner has been split up. Coercive processes have been issued against the petitioner by the learned Magistrate. The petitioner apprehends imminent arrest.

2. According to the learned counsel for the petitioner, the petitioner is absolutely innocent. His absence was not wilful. He is willing to surrender before the learned Magistrate and seek regular bail. The co-accused have already been acquitted. The petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He therefore prays that directions under Section 438 and/or 482 Cr.P.C may be issued in favour of him.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a

pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-